

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEROME KNIGHT, #296419,)
Petitioner,)
) No. 5:06-cv-105
-v-)
) HONORABLE PAUL L. MALONEY
SHIRLEE HARRY,)
Respondent.)
)

**ORDER REJECTING REPORT AND RECOMMENDATION AND CONDITIONALLY
GRANTING RELIEF UNDER 28 U.S.C. § 2254**

This matter comes before this Court on an application for writ of habeas corpus under 28 U.S.C. § 2254 filed by Jerome Knight. Knight was convicted, along with his co-defendant Gregory Rice, after a jury trial in the Wayne County Circuit Court. After exhausting his appeals in the state courts, Knight filed his habeas petition with this Court. The Magistrate Judge issued a report recommending the petition be denied (ECF No. 37), to which Knight filed objections (ECF No. 38). While the report and objections were pending, Judge Hood, in the United States District Court for the Eastern District of Michigan, issued an opinion and order granting the application for a writ of habeas corpus filed by Gregory Rice. Knight's application and Rice's application both raised the same issue, a *Batson* challenge to the selection of the jury. The Government appealed Judge Hood's decision, and this Court entered a stay, holding Knight's application in abeyance pending the appeal in the Rice case. (ECF No. 39.)

On July 26, 2011, the Sixth Circuit Court of Appeals affirmed Judge Hood’s decision. *Rice v. White*, 660 F.3d 242 (6th Cir. 2011). After the Government’s petition for writ of certiorari was denied by the United States Supreme Court, the Sixth Circuit issued its mandate on June 26, 2012. In response to this Court’s show cause order, the Government acknowledges that the Sixth Circuit’s

decision in *Rice v. White* is binding and requires this Court to grant the relief requested in Knight's application for habeas relief. (ECF No. 44.)

For these reasons, **IT IS HEREBY ORDERED** that

1. The report and recommendation (ECF No. 37) is **REJECTED**;
2. Jerome Knight's application for writ of habeas corpus under § 2254 is **CONDITIONALLY GRANTED**. Consistent with the Sixth Circuit's opinion in *Rice v. White*, 660 F.3d 242 (6th Cir. 2011), the State of Michigan shall retry Petitioner Jerome Knight within 180 days, or release him from custody.

Date: August 7, 2012

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge